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20 **UNITED STATES DISTRICT COURT**  
21 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

22 MAUREEN HARRINGTON

23 Case No.: 2:22-cv-08230-HDV-E

24 Plaintiff,

25 v.

26 DEEPAK DUGAR, M.D.,  
27 A MEDICAL CORPORATION

28 **DEFENDANT'S MEMORANDUM  
OF CONTENTIONS OF FACT AND  
THE LAW**

29 Defendant

30  
31 Defendant Deepak Dugar, M.D., a Medical Corporation (“Dugar Corp.”), by  
32 its undersigned counsel, acting in accordance with the Court’s September 12, 2023  
33 Scheduling Order [Doc. 99] and L.R. 16-4, submits the following:

1           I.       The Parties' Claims and Defenses

2           (a)     Summary Statement of Plaintiff's Claim for Copyright  
3       Infringement.

4           Plaintiff has alleged and is pursuing a claim for copyright infringement  
5       pursuant to 17 U.S.C. §101 et. seq. Its claim is based upon Defendant's use of a  
6       photograph created by the deceased photographer Blaine Harrington III, registered  
7       with the United States Copyright Office, which was posted as part of a blog on  
8       Dugar Corp's website in 2020, which Dugar Corp. removed from its website upon  
9       being advised by Plaintiff's attorney that its use was infringing.

10           (b)     Elements Required to Establish Plaintiff's Claim for  
11       Infringement. To establish a claim for copyright infringement, Plaintiff must show  
12       that

13                   (1)    it is the author of the work--here a photograph--that is the  
14       subject of its claim;

15                   (2)    that the photograph has been registered with the  
16       Copyright Office;

17                   (3)    that the Defendant had access to the Copyrighted work;  
18       and

19                   (4)    that the Defendant copied or displayed the work without  
20       the permission of the Copyright owner.

1 (c) Description of Key Evidence in Opposition to Plaintiff's Claim.

2 Initially, Dugar Corp. does not dispute that Plaintiff owns a valid  
3 copyright in the Subject Photograph, or that the photograph was registered with the  
4 Copyright Office, or that it displayed the photograph on its website in 2020 without  
5 consent from Mr. Harrington. Rather, it will show that when it did display the  
6 photograph, it had no knowledge of Mr. Harrington's ownership; that the office  
7 manager selected the photograph from a website that did not identify the  
8 photograph as being owned or copyrighted by Mr. Harrington; that the principal of  
9 Dugar Corp., Dr. Dugar, relied on the office manager who he was sure understood  
10 she should not use copyrighted works on the website; and that under the  
11 circumstances he had no reasonable way of knowing of Mr. Harrington's existence,  
12 much less his ownership of copyright in the photograph.

17 Defendant will show that Plaintiff is engaged in the business of  
18 pursuing claims to extort unreasonable amounts in settlement for claims of  
19 copyright infringement against hundreds of defendants who unwittingly use  
20 photographs found on the web without indication of Plaintiff's ownership.  
21 Evidence in support of this includes that Plaintiff has over the past five years  
22 conducted his business of litigation separate from his occupation as a photographer  
23 and has earned over \$500,000 from his litigation activities representing most of his  
24 income; that he threatened hundreds of such unwitting infringers with suits for  
25 copyright infringement, suing those who refuse to settle immediately; that Plaintiff  
26  
27  
28

1 demands amounts far in excess of the fair value of these claims; that Plaintiff  
2 knowingly intends to exact amounts from defendants Plaintiff knows are in excess  
3 of the fair settlement value of these claims; that Plaintiff threatens defendants by the  
4 use of misleading statements about their likely potential liability, relying on the fear  
5 of defendants and their unwillingness or inability to fund the costs of defense of  
6 such claims; that the deceased photographer, Blaine Harrington, an extremely  
7 sophisticated user of technology relating to photographs, used his knowledge of  
8 technology to locate infringers throughout the United States, but took no action to  
9 prevent the availability of photographs that bore no evidence of his claim to  
10 ownership, in order to pursue and achieve unreasonable and extortionate  
11 settlements; and that Plaintiff ran this litigation operation as a business, delegating  
12 total authority to his lawyers to determine what to demand and what settlements to  
13 accept, without reference to the value of the allegedly infringing uses, and without  
14 knowledge of the value of the photographs in question. In the instant case Plaintiff  
15 and her deceased husband testified that they were without knowledge of the value  
16 of his photographs for sale or licensing, but authorized the lawyers to make those  
17 decisions.

23                   Defendant will further show, relating to any damages Plaintiff may  
24 claim, that Plaintiff has no evidence that she has been damaged; that Defendant has  
25 not earned any profit from the use of the photographs; and that its use was innocent  
26 of any intention to violate Plaintiff's copyright.

1 (d) Defendant's Counterclaims and Affirmative Defenses.

2 Dugar Corp. filed a counterclaim for intentional tort. It has  
3 subsequently offered to withdraw that counterclaim, as discussed below.  
4

5 Defendant has asserted as its principle affirmative defense Mr.  
6 Harrington, prior to his death, was engaged in the misuse of copyright, pursuant to  
7 which he brought this action.  
8

9 (e) Elements to Establish Defendant's Affirmative Defense.

10 In the broadest sense possible the affirmative defense is premised upon  
11 Plaintiff's inappropriate use of copyright for purposes not consistent with the  
12 purposes of copyright, *i.e.*, the instant lawsuit as part of the course of litigation  
13 conduct in which Mr. Harrington had pursued, did not serve the purpose of  
14 copyright, *i.e.*, to create works of authorship to benefit the public, but rather his  
15 conduct is for the purpose of unfairly enriching himself at the expense of innocent  
16 or at least unwitting infringers, in hopes that they will pay amounts far in excess of  
17 the reasonable settlement value of plaintiffs claims solely to avoid the costs of  
18 litigation they can expect to exceed the value of what they could hope to achieve by  
19 defending the claims. Plaintiff in this and all those similar cases exploits these  
20 facts, in part by misrepresenting to defendants their realistic potential liability.  
21

22 (f) Third Parties Affected.

23 There are no third parties with interest directly implicated in the  
24 present case.  
25

1 (g) Motion in Limine.

2 Defendant anticipates filing a motion in limine to exclude Plaintiff  
3 offering evidence of the licensing value of the photograph at issue in support of her  
4 damage claim in this matter, premised upon Plaintiffs' repeated statements during  
5 the course of discovery, some of which were under oath, that they had no  
6 knowledge of the value of the photograph at issue.  
7

8 II. Bifurcation of Issues.  
9

10 Neither Party has sought to bifurcate any issues at trial.  
11

12 III. Jury Trial.  
13

14 Plaintiff's claim for copyright infringement is triable to a jury as a matter of  
15 right, as demanded a jury trial, has also demanded a jury trial applicable to the  
16 determination of its affirmative defenses to damages claim.  
17

18 IV. Attorney's Fees.  
19

20 Defendant will seek attorneys fees if it is successful in obtaining a favorable  
21 verdict in this case, and may also do so if Plaintiff secures a favorable verdict in an  
22 amount less than Defendant has offered in judgment, to which Plaintiff did not  
23 respond.  
24

25 V. Abandonment of issues.  
26

27 Defendant has notified Plaintiff that it intends to withdraw its counterclaims  
28 for declaratory judgment and intentional tort; and its fourth and fifth affirmative  
defenses for invalidity/unenforceability of copyright and implied license.  
29

Respectfully submitted,

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29  
30 **PROOF OF SERVICE FOR**  
31 **DEFENDANT'S MEMORANDUM**  
32 **OF CONTENTIONS OF FACT AND**  
33 **THE LAW**

34  
35 I hereby certify that on this 13th day of February, 2024, a true and correct  
36 copy of Defendant's Memorandum of Contentions of Fact and the Law, along with  
37 this Proof of Service, was filed and served via the Court's CM/ECF system to the  
38 following counsel of record.

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18 */s/ Jeffrey L. Squires*

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